

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

CRL.A.No. 2187 of 2004(D)

**SC.300/2003 of ADDL. SESSIONS COURT (ADHOC), THODUPUZHA
CP.18/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THODUPUZHA**
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APPELLANT/APPELLANT:

**DAS, S/O.SREEDHARAN, C.NO.8405,
CENTRAL PRISON, TRIVANDRUM - 695 012**

BY ADV. SRI.SAJEEV T PRABHAKARAN.

RESPONDENT/RESPONDENT:

**STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.**

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 07/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.2187 OF 2004 ()

Dated this the 7th day of September, 2007

J U D G M E N T

KOSHY,J.

Dead body of a 50 year old woman was found in a rubber estate by PW1 at 8.30 a.m on 13.1.2003. PW1 is a rubber tapper. He informed the matter to the police and lodged Ext.P1 Statement. He only informed that he found a dead body in the rubber estate. There is only alternative tapping and on 12th there was no tapping and on 13th he saw a dead body. Police has registered the F.I.R. The inquest report shows that the dead body was found naked except only braziers. According to the prosecution, she was leading a life of loose morals. PW13 Assistant Professor of Forensic Medicine conducted post mortem and issued Ext.P12 certificate. The ante-mortem injuries noticed in the post mortem certificate are as follows:

Injuries (Ante-mortem):

1. Multiple small contused abrasions over an area 13

x 7 cm on the left side of front of neck and left sub mandibular area. A few resembled nail marks.

2. Multiple small contused abrasions 15 x 7 cm on the right side of front of neck and right sub mandibular area.

3. Lacerated wound skin deep 1.50 x 7 cm on the left side of face 1 cm. in front of left ear.

4. Contused abrasions 14 x 8 cm on the front of chest over middle area close to the supra-sternal notch.

5. Multiple small contused abrasions 16 x 5 cms on the forehead and adjoining area of right side of face.

6. Multiple contused abrasion 12 x 7 cm on the left side of front of abdomen at the level of umbilicus 6 cm outer to middle.

7. Three superficial laceration vertically placed over an area 5 x 3 cm on the mons pubis.

8. Abrasion 2 x 1 cm on the front of left knee.

9. Abrasion 5 x 4 cm on the front of right knee.

10. Contused abrasion 4 x 1.5 cm on the back of right wrist.

11. Thyroid cartilage was fractured. Right greater horn of hyoid bone was fractured. Muscles on the front of laryngeal box was infiltrated with blood in a patchy fashion. There were discrete contusions of subcutaneous tissues of size 2 x 2 cm on either side of sub mandibular area.

12. Right side ribs 2 to 8 fractured on the front left side ribs 2 to 6 fractured on the front Both lungs showed utile contusions and superficial lacerations. Both chest cavities contained blood 200 ml in right

and 300 ml in left.

13. Left lobe of liver was lacerated. Spleen was lacerated. Peritoneal cavity contained 1.2 litres of blood.

According to the doctor, deceased died due to the blunt injuries sustained to neck, chest and abdomen. It was also noticed that rigor mortis was present on upper and lower limbs. During evidence, doctor also stated that the injury No.11 alone is likely to cause death. According to him, injuries nos.11, 12 and 13 could be caused by blunt force like kicking with leg, pressing with hand etc. Injuries nos.1 to 3 could be caused of pressed with hands. Injuries Nos.7 to 9 could be caused in contact with rough object. The time of death was in between 16 to 36 hours before autopsy. He further stated that the stomach has alcoholic smell and the death might have occurred within 2 to 4 hours after taking the meals. In cross examination he stated that after the death within four hours rigor mortis will be established. The post mortem was conducted between 3.45 p.m. and 4.45 p.m. on 13.1.2003. Accused was arrested on 25.2.2003 alleging that accused is responsible for the death and he was charge sheeted

accordingly. The prosecution relied on the evidence of PWs.2 and 3 who have been examined to show accused and deceased were last seen together. Prosecution alleged on the basis of a confession of the accused also recovered a nose stud from the shop of PW7 wherein PW8 was employed. Apart from these two circumstances, there is no other evidence to connect the accused with the crime.

2. With regard to the evidence of PW2, he deposed that the accused borrowed Rs.10/- from him. Thereafter he went to the toddy shop and returned and then went to the bus stand. He also went along with him. There is a rubber plantation and they sat there for about ten minutes. Thereafter PW2 returned and on the next day he came to know about the death of Mary. He has never seen deceased and accused together. He has not seen Mary on that day. At the maxim it proves that PW2 and accused together went to the rubber estate at about 7.30 p.m. much before the incident took place. In fact PW3 deposed that he has seen the deceased later. His evidence will not show that he has last seen accused and deceased together.

3. Then the next witness is PW3, who is an autorickshaw driver. He stated that on 13.1.2003, at about 10.30 p.m., Mary called his auto and along with him one Tennyson, his sister's son was also there and as requested by the deceased, he took the auto to the SreeKrishna Theatre. Since there was no ticket available, as requested by the deceased they came back to the Vaisaly bar and Mary went into the bar and he waited there and after some time she came back and thereafter she went to nearby shopping complex and at that time she gave a 100 rupee note. Since there was no change she asked him to wait and she went to the rubber estate. After ten minutes, since Mary did not return, he went inside the estate and he saw that accused and deceased were exchanging abusive words. He asked auto charges. Then accused told him to do what he wants and go away. Again Mary gave 100 rupee note. He saw it in the light of safety match. Since there was no change he told her that the amount need be given on the next day. In cross examination, he stated that he usually drives auto in front of Chazhikkad Hospital and he waits there from 8 a.m. to 10 p.m. It is pertinent to note that according to him, Mary gave the amount

only at 10.30 p.m. He further stated that at the time he had no licence to drive an autorickshaw even though he took licence subsequently. Then also he had no badge to run an auto. He was an accused in 10 to 30 cases and he paid fine. He also stated that several times accused and deceased came near his house and on that day nobody called his auto before deceased Mary had called. He also stated that he has several times seen Mary lying drunken and going with several persons. He also stated that the distance between shopping place and estate was 10 to 50 feet. He also further stated that he knew the accused by seeing him picking scrap materials. He also stated that earlier he never went to the rubber estate and he cannot say that rubber estate was full of stones. Suggestion of the counsel for the accused is that he is a made up witness. He was accused in many cases. His 161 statement was taken after the arrest of the accused, that is, after more than 45 days of the alleged incident. He only obliged to the police. His evidence as a whole is not seems to be trustworthy. It would appear that he was taking Mary here and there with several customers and according to him, Mary took the auto went to the cinema theatre and came back to the bar. She consumed

liquor and again went to the shopping complex and then went to the plantation and she returned to the place within half an hour. He was all along waiting for her. She was the only customer for his autorickshaw on that day and due to lack of change for 100 rupee note he has not received anything. He was not telling the truth. From the evidence of PW3, we are unable to hold that accused and deceased seen last together so as to enter conviction on that sole circumstance. From the evidence of PW3 itself it can be seen that possibility of several persons were coming to see Mary in the rubber plantation also cannot be denied as according to him, several persons came in search of Mary and left. Tennyson who was with PW3 in the autorickshaw through out was not examined.

4. Now we will come to the recovery aspect of MO1 gold nose stud. As per the recovery mahazar, on the basis of the confession, along with the accused, Police went to the shop of PW8 and PW7 handed over MO1 gold nose stud and it was recovered from the shop. But PW7 who was declared hostile deposed that accused never came there but police alone came and asked for a small nose stud and took the same from the

jewellery. It is also stated that MO1 is of new fashion stud. PW8, the owner of the shop also stated similar version. Therefore recovery was not proved and it was only a planned evidence to connect accused with the crime. PW5 who was examined to prove that the recovered nose stud was owned by the deceased and was also failed to prove the same. PW5 in cross examination stated that she knew Mary from the last 20 years and from the very beginning she was wearing a nose stud and that was not a separate sign for identification.

So the recovery is not proved and it was also not proved that MO1 nose stud made as per latest fashion belongs to deceased Mary.

5. None of the circumstances relied on by the prosecution to connect the accused with the crime were proved. There is no reasonable evidence or circumstance to convict accused under Section 302 of the Indian Penal Code.

Hence we set aside the conviction and sentence passed on the accused under Section 302 of I.P.C. Appellant is acquitted and he should be set free forthwith if his continued detention is not required in connection with any other case.

Appeal is accordingly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

CRL.A.NO.2187 OF 2004 ()

J U D G M E N T

7th September, 2007